

NARUC respectfully suggest that the FCC's first preemptive proposal is, at best, premature. As discussed in the next section, infra, the FCC's second proposal concerning preemption of State rate regulation of interconnection tariffs for others to access a commercial MS network cannot be supported on either a legal or policy basis.

Congressional intent to allow States to prescribe terms and conditions, other than rate or entry, governing other aspects of commercial MS could not be more clear. Preemption of State regulation of the physical aspects of interconnection with the local exchange carrier would seem to fit squarely under this explicit Congressional authorization. Moreover, the FCC has not identified any existing State policy concerning INTRASTATE interconnection that negates INTERSTATE interconnection rights or explained how ALL POTENTIAL State intrastate interconnection policies will conflict with such goals. Indeed, as the FCC has essentially acknowledged in other contexts,¹⁰ often State regulatory policies provide favorable or more efficient arrangements for intrastate services than existing federal schemes do for interstate services. Clearly, in such cases, the state policies advance federal goals.

¹⁰ An examination of the FCC's pronouncements in the Docket 91-191 proceedings, make clear that, at least insofar as special access collocated facilities are concerned, the differences in state-specific policies have not hindered the development of competition. Indeed, it appears such policies they have facilitated and stimulated competition. Several States allowed intrastate collocation arrangements in advance of FCC initiatives to allow essentially the same thing for interstate services.

K. Preemption of State rate regulation of commercial MS "interconnection" tariffs is precluded; commercial MS providers must allow access to all local and toll carriers.

As noted, supra, the FCC has also asked for comment on whether:

- (1) it "...should require commercial mobile service providers to provide interconnection to other mobile service providers,"
- (2) "under Section 332(c)(3), state regulation of interconnection rates of commercial mobile service providers is preempted," and finally,
- (3) "any or all classes of PCS providers of commercial mobile service should be subject to equal access obligations like those imposed on LECs." NPRM, ¶ 71, mimeo at 26.

NARUC will only comment on the last two issues raised. As for the need to impose equal access obligations, since NARUC's earlier cited November 1990 PSC Resolution, we have consistently advocated that "service provider must allow access to all local and interexchange/toll carriers." NARUC Resolution, NARUC No. 47-1990 at 11.

As for the FCC query concerning whether § 332 preempts State rate regulation of interconnection provided by commercial MS to other carriers, NARUC contends that proposal cannot be supported. A review of the legislative history of the Budget Act, and the tests provided for States to re-enter/continue rate regulation, clarify that Congress intended the preemptive effects of that legislation to apply only to rates charged consumer end-users of such services. From a policy perspective, given the Congressional acknowledgment that commercial MS are expected to compete with existing landline and wireless services, it makes little sense to assume authority over commercial MS interconnection tariffs is

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preempted while States retain the clear right to regulate
commercial MS interconnection with LECs.

IV. CONCLUSION

NARUC believes that the Communications Act requires that PCS
service providers be regulated as commercial MS and that effective
implementation of such services requires imposition of the
conditions described above. We support the Commission's
initiative in pursuing development and implementation of personal
communication services, and respectfully request that the
Commission carefully examine and give effect to these comments.

Respectfully submitted,



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November 9, 1993

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.

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